

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 08-O-12299 (08-O-13293;
)	09-O-11318; 09-O-13601;
)	09-O-14868; 09-O-16007;
DAVIDSOON YOUNG LEE,)	09-O-16260; 10-O-00816;
)	10-O-01718; 10-O-05918;
)	10-O-07103) – LMA
Member No. 229873,)	
)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT
)	

Respondent DavidSoon Young Lee (respondent) was charged with 17 counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC),

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to this source.

and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on January 14, 2004, and has been a member since then.⁴

Procedural Requirements Have Been Satisfied

On April 29, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address. The United States Postal Service returned the NDC as undeliverable. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent is no longer at his membership records address or telephone number. Mail sent to that address has been returned as undeliverable, and respondent's telephone number is disconnected. However, reasonable diligence was used to notify respondent of this proceeding. A search of various internet-based search databases for alternate addresses for respondent revealed three possible addresses (including respondent's membership records address) and the address of a relative. The State Bar sent a letter, enclosing a copy of the NDC, to all four

³ If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

⁴ Respondent tendered his resignation with charges pending on November 19, 2009. However, on January 12, 2011, the Supreme Court filed an order declining to accept the resignation.

possible addresses for respondent, including his membership records address, and to his email address listed on his State Bar membership records.⁵

Respondent failed to file a response to the NDC. On July 12 and 14, 2011, the State properly served on respondent's membership records address and filed, respectively, a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on July 28, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On February 24, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since the default was entered on July 28, 2011; (2) there are other matters pending that have not been filed with the State Bar Court; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not yet considered the multiple claims of respondent's victims pending the final disbarment order in these matters. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on March 21, 2012.

⁵ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85, subd. (E)(1)(d).)

1. Case Number 08-O-12299 (Lee Matter)

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by accepting employment and then failing to: (1) file an answer; (2) contact the opposing attorney by telephone or mail; and (3) take steps to defend his client and his client's business.

Count Two – respondent willfully violated section 6106 (commission of act of moral turpitude, dishonesty or corruption) by misrepresenting to his client that he had sent two letters to opposing counsel and that the workers' compensation matter was almost settled.

Count Three – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to promptly refund unearned fees) by failing to refund the entirety of the fees paid by his client, which were unearned.

Count Four – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to provide a written response to the allegations in a disciplinary investigation or otherwise cooperate in the investigation of this matter after being contacted by the State Bar.

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2. Case Number 08-O-13293 (Song Matter)

Count Five – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (preserving identity of funds and property of a client) by failing to maintain \$40,000 payable to his client in his client trust account.

Count Six – respondent willfully violated section 6106 by misappropriating from his client \$37,482.79. Although the NDC alleged that the amount misappropriated was \$40,000, there is no clear and convincing evidence that respondent misappropriated more than \$37,482.79 from his client, as there is no allegation that the balance in the client trust account dropped below \$2,517.21.

Count Seven – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by accepting employment from his client in two matters and then failing to file answers and failing to undertake steps to prevent the entry of default against his client.

3. Case Number 09-O-11318 (Park Matter)

Count Eight – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to properly process his client’s visa application and failing to file a timely motion to reopen the visa matter.

4. Case Number 09-O-13601 (Kim Matter)

Count Nine – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render appropriate accounts of client funds) by failing to provide an accounting to his client of the portion of the fees which were earned at the time he was terminated, despite multiple requests for a refund from his client of the unearned portion of the fees she paid.

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5. Case Number 09-O-14868 (Lee Matter)

Count Ten – respondent willfully violated section 6068, subdivision (a) (attorney’s duty to support Constitution and laws of United States and California) by violating sections 6125 and 6126 by meeting with a client and providing legal services to a client, and by preparing a substitution of counsel form when he was not entitled to practice law.

Count Eleven - respondent willfully rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by charging his client for a client meeting and preparation of a substitution of counsel form which occurred while respondent was not entitled to practice law.

6. Case Number 09-O-16007 (Diaz Matter)

Count Twelve – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by failing, upon termination of employment, to release a client’s file to a client, despite the client’s multiple requests to do so.

7. Case Number 09-O-16260 (Delgado Matter)

Count Thirteen – respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct (prohibition on practicing law in violation of other jurisdiction’s professional regulations) by filing a Chapter 13 petition on behalf of a client when he was not entitled to practice law in California.

8. Case Number 10-O-00816 (Ramos Matter)

Count Fourteen – respondent willfully violated section 6103 (violation of court order) by failing to comply with court sanctions orders.

9. Case Number 10-O-01718 (Insufficient Funds Checks)

Count Fifteen – respondent willfully violated section 6106 by issuing two checks on his client trust account when he knew, or in the absence of gross negligence, would have known that the balance in the account was substantially less than the amount of the checks.

10. Case Number 10-O-05918 (Han/Chun Matters)

Count Sixteen – respondent willfully violated section 6103 by failing to comply with court sanctions orders.

11. Case Number 10-O-07103 (Unauthorized Practice of Law Matter)

Count Seventeen – respondent willfully violated section 6068, subdivision (a) by continuing to operate his law office, thereby holding himself out to his client(s) as entitled to practice law and actually practicing law when he was not an active member of the State Bar in willful violation of sections 6125 and 6126.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar sent a letter, enclosing a copy of the NDC, to all four possible addresses for respondent and to his email address;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

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RECOMMENDATION

Disbarment

The court recommends that respondent DavidSoon Young Lee be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to the following payees:⁶

- (1) Ho Uk Lee in the amount of \$3,000 plus 10 percent interest per year from November 2, 2006;
- (2) Su H. Song in the amount of \$37,482.79 plus 10 percent interest per year from February 28, 2007; and
- (3) United States District Court for the Central District of California in the amount of \$3,500.⁷

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

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⁶ There is no clear and convincing evidence that any further money is owed to other individuals or entities.

⁷ This figure represents the total sanctions entered against respondent in the Ramos, Han and Chun matters (counts fourteen and sixteen).

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that DavidSoon Young Lee, State Bar number 229873, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: June _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court